

Legislature to consider override of Perdue's veto of the "Racial Justice Act" repeal.

**Beaufort
Observer**
— online edition



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December 20, 2011

Governor Perdue has vetoed the repeal of the "Racial Justice Act." (RJA). The Legislature will meet January 4, 2012 to consider whether to override the veto or not. It should do so.

The idea behind the RJA is that you can use statistics to show that the imposition of the death penalty is illegally discriminatory. If a judge finds that the stats support that assertion the sentence is changed from execution to life in prison without parole.

There are some legal experts who point out that in North Carolina "life in prison" has been interpreted to mean 70 years. So if you have credit for good behavior and other things you might be eligible for parole earlier. There's already been litigation on this issue and the legal issues are not clear, not the least of which is the issue of *ex post facto* "retroactive application" of a law.

Rep. Bill Cook voted to keep capital punishment in North Carolina while Sen. Stan White voted to keep the RJA. Cook sent us the following statement upon Perdue veto: "The Governor has again used her veto power to thwart the will of the people. By her action she has insured that capital offenses can not be punished by the death penalty and caused a logjam in our judicial system of monumental proportions, all for political reasons." We heard nothing from Sen. White.

House Majority Leader Skip Stam said:

Last week Governor Beverly Perdue vetoed SB 9 "An Act to Reform the Racial Justice Act of 2009 to be consistent with the United State Supreme Court Ruling in *McClaskey v. Kemp*".

Once again she has demonstrated her lack of understanding of the law enforcement needs of our

people by thwarting the will of almost every elected law enforcement official in the state.

The Racial Justice Act is, in effect, another six year moratorium on enforcement of the death penalty. In her campaign for office Governor Perdue claimed to believe that the death penalty for first degree murder was appropriate. Since taking office she has actively participated in an elaborate ruse that puts the death penalty on hold for many years while the courts determine whether other murderers (not even these murderers) were discriminated against 10, 20, 30 or even 40 years ago in other districts than their own, by other prosecutors, (some deceased or out of office) or by other judges or juries. She has forgotten the first principles of justice - that it is personal to this particular defendant and to this particular victim.

The Governor's claim that she is a strong supporter of the death penalty is belied by her veto. The so called "Racial Justice Act" which allows white murderers to claim "racial discrimination" because they murdered white victims in cold blood but were convicted by too many white jurors is obviously misnamed.

Her lawyers know the truth. The Attorney General knows the effect of the "Racial Justice Act". The District Attorneys and the Sheriffs of this state, each elected by the people, know that her actions do not match her bold words.

The Governor's claim that the veto was necessary to prevent racial discrimination in the administration of the death penalty is not a true claim. Read the bill that she vetoed. It allows for relief when a murderer can demonstrate racial prejudice in his or her own case. That has been the law for a long time and will remain the law under this legislation.

One of the experts on the issue in how statistics are used in such cases is Dr. Elliot M. Cramer, retired professor at UNC-CH. He wrote an editorial for the *Chapel Hills News* that said:

The N.C. House Appropriations Committee is now considering the "Racial Justice Act," previously passed by the Senate. The bill is "an effort to ensure race isn't a factor in any death penalty case." It would allow "those on death row to argue race played a role in their death sentence or someone accused of capital murder in a prosecutor's decision to seek the death penalty." This is a solution in search of a problem; that right has always been available.

It is true that North Carolina has a sad history of discrimination against African-Americans; 91 African-Americans and only 28 whites were executed from 1941-61. Since then, only 13 African-Americans and 28 whites have been executed, a complete reversal from previous years.

A different sort of racial discrimination is now asserted -- that murderers of African-Americans are LESS likely to get the death penalty than murderers of whites. This claim was first made in 1983 on behalf of John Rook, a white man who brutally raped and murdered a white woman. Astonishingly, his attorneys argued that the death penalty was discriminatory and that he would have been less likely to get the death penalty had he raped and murdered an African-American woman. This argument is now turned on its head, asserting discrimination against African-Americans because African-American life is undervalued. Since over 90 percent of the murderers of African-Americans are African-American themselves, the apparent remedy would

be to execute more African-American murderers.

It is often asserted (with little evidence) that African-Americans who murder whites are more likely to be executed than whites who murders African-Americans. It is very rare for a white to murder an African-American, and inter-racial murders tend to be particularly aggravated, making the death penalty more likely. Of those eligible for the death penalty, about eight times as many African-Americans murder whites as whites murder African-Americans.

The Racial Justice Act is unnecessary since claims of racial discriminations can be made in court without the act. Such a claim was recently made in Durham in the case of Keith Kidwell, charged with murdering a store clerk during a robbery. Based on a new study by UNC political science professor Isaac Unah, it was argued that "prosecutors are six times more likely ... to seek capital punishment when a black suspect has been accused of killing a white person compared with when the victim is black."

The analysis is so flawed as to be utterly worthless. Few of the defendants were even eligible for the death penalty and there was no information about the nature of aggravating circumstances, the importance of which Dr. Unah has acknowledged in a previous paper. Ironically, in 2003 Dr. Unah stated that "local prosecutors in the South, who once made race-conscious decisions concerning whom to prosecute for the death penalty, now appear race-neutral."

Dr. Unah is well known for a widely publicized 2001 paper alleging discrimination in the death penalty. In a press conference that year, it was reported that "the study's critics are welcome to review the data," but the data have never been made available, despite many requests. I do not believe that there is a shred of evidence that there is racial discrimination in the death penalty. Certainly this act will encourage more litigation with false claims of discrimination, enriching lawyers and statistical consultants like me. This act serves no useful purpose.

We think Stam's position is the sensible one: If a defendant can show there was invidious discrimination in his/her case then they should get a new trial. It is crazy to suggest that a death sentence should be reduced because of what happened in any other case. If the person got a fair trial in which race was not a factor then the death penalty should stand.

[Click here](#) if you want to read a detailed explanation of why the original claim upon which the RJA is based is bogus.